## REMARKS

Claims 1-133 have been canceled and claims 134-177 have been added in the present amendment. Support for the newly added claims appears throughout the specification including, for example, on page 13 lines 1-48. No new matter has been added. Applicants also note the newly added claims 134-164 do not contain material of the non-elected group II as defined in the outstanding Office Action. Claims 1-133 have been canceled and claims 134-167 have been added not for reasons of patentability, but for clarification and to pursue previously unclaimed subject matter of proper scope that Applicants have a right to claim.

In summary of the outstanding Office Action, Examiner noted claim 29 lacked antecedent basis, Claims 1 and 8 stand rejected for obviousness-type double patenting, Claims 15-17, 21-25, 51, 52-53, 57-60, 63-34, 70-89, 92-93, 95-99, 103-108, 110-113, 117-123, 127-128 are rejected under 35 U.S.C. § 102(e) as being unpatentable over Russo U.S. Patent No. 5,619,247. Claims 1, 2, 6-9, 13-14 are rejected under 35 USC § 103(a) as being unpatentable over Russo and further in view of Walters et al., U.S. Patent No. 5,440, 334. Claims 26-33, 47-50, 61-62, 65, 66-69, 90-91, 94, 109, 124-126 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Russo. Claims 34-36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Russo and further in view of Rabowsky U.S. Patent No. 6,141,530. Claims 39-40 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Russo and further in view of Leighton U.S. Patent No. 5,949,885. Claims 41-46 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Russo and further in view of Hoffberg et al. U.S. Patent No. 6,400,996.

Reconsideration of the outstanding rejections to the claims is respectfully requested in view of the present amendments and following remarks.

### *Lack of Antecedent Basis for Claim 29*

Claims 1-133 have been canceled and claims 134-167 have been added not for reasons of patentability, but for clarification and to pursue previously unclaimed subject matter of proper scope that Applicants have a right to claim. Therefore, Claim 29 has been canceled without prejudice and Applicants do not concede the propriety of the rejection of

Claim 29. The issue of the alleged lack of antecedent basis in claim 29 has been rendered moot by the above cancellation of claim 29.

***Rejections for Obviousness-Type Double Patenting of Claims 1 and 8***

Claims 1-133 have been canceled and claims 134-177 have been added not for reasons of patentability, but for clarification and to pursue previously unclaimed subject matter of proper scope that Applicants have a right to claim. Therefore, the rejection of Claims 1 and 8 have been canceled without prejudice and Applicants do not concede the propriety of the rejections to any of the canceled claims. Applicants respectfully request Examiner withdraw these rejections as the cancellation of Claims 1 and 8 has rendered the rejections moot.

***Rejections under 35 USC § 102(e) and 103(a)***

Claims 1-133 have been canceled and claims 134-177 have been added not for reasons of patentability, but for clarification and to pursue previously unclaimed subject matter of proper scope that Applicants have a right to claim. Therefore, Claims 1-133 have been canceled without prejudice and applicants do not concede the propriety of the rejections to any of the canceled claims. Applicants respectfully request Examiner withdraw these rejections as the cancellation of Claims 1-133 has rendered the rejections of the claims under 35 USC § 102(e) and 103(a) moot.

However, with respect to the patentability of newly added base claims 134 and 158 vis-à-vis the references cited by the Office Action, among other undisclosed elements, none of the references in particular disclose "transmitting classification information in a header of at least some of the plurality of video programs transmitted; providing a mechanism to compare the classification information to preference information of a consumer location; and providing a mechanism to automatically select video programs from the plurality of video programs having a defined degree of similarity between the classification information and the preference information." The Office Action is silent on each of these elements except "transmitting classification information in a header of at least some of the plurality of video programs transmitted." With respect to this element, the Office Action states "it would have been obvious for one of ordinary skill in the art to have information in the header to enable matching because it would have enabled efficient identification of the broadcast content."

Applicants respectfully submit that the header information of claims 134 and 158 is not for identification of broadcast content, but for classification of the broadcast content. The classification is in order to "compare the classification information to preference information of a consumer location" as is stated in claims 134 and 158. Therefore, it would not have been obvious to one of ordinary skill in the art to transmit "classification information in a header of at least some of the plurality of video programs transmitted," given the reasoning of the Office Action.

Also, regardless of whether it would have obvious to transmit "classification information in a header of at least some of the plurality of video programs transmitted," the elements of "providing a mechanism to compare the classification information to preference information of a consumer location; and providing a mechanism to automatically select video programs from the plurality of video programs having a defined degree of similarity between the classification information and the preference information," are not disclosed in any of the references and are not discussed in the Office Action.

Thus, for the reasons above and others, Applicants submit that all the limitations of newly added claims 134-177 are not taught or suggested by Russo, Walters et al., Rabowsky, Leighton, Hoffberg et al., or any combination thereof.

***Related Applications***

Also, Applicants would like to note that this application is related to U.S. Patent Application No. 09/737,826 "Video and Music Distribution system," filed December 15, 2000 in which the examiner cited U.S. Patent No. 5,619,247 (Russo), U.S. Patent No. 6,148,428 (Welch), U.S. Patent No. 6,069,868 (Kashiwagi), U.S. Patent No. 5,862,260 (Rhoads), and U.S. Patent No. 4,794,465, (Luyt) in the most recent Office Action. Applicants would also like to note that the present application is related to U.S. Patent Application Serial No. 09/781,680 and Application Serial No. 09/781,679 both filed on February 12, 2001, and Application Serial No. 09/553,524, filed October 20, 2004. The examiners in those cases have collectively cited U.S. Patent No. 5,619,247 (Russo), International Publication No. WO 01/54410 A2 (Braitberg), U.S. Patent Application Publication No. 2004/0083492 (Goode et al.), and U.S. Patent No. 6,438,751 (Voyticky), Patent Application Publication No. 2004/0054630 A1 (Gitner et al.), U.S. Patent Application

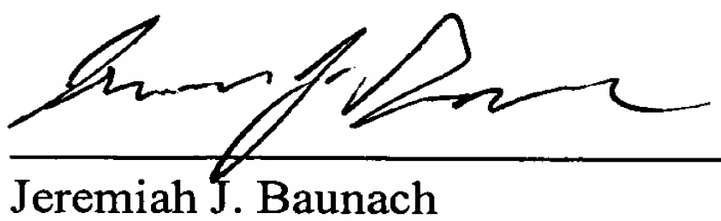
Publication No. 2004/0054630 (Yuen et al.) and U.S. Patent Application Publication No. 2002/0100043 (Lowthert), U.S. Patent No. 6,177,931 (Alexander), U.S. Patent No. 6,522,769 (Rhoads), U.S. Patent No. 5,963,217 (Grayson), U.S. Patent No. 5,734,720 (Salganicoff), U.S. Patent No. 6,804,825 (White), and U.S. Patent Application Publication No. 2002/0056112 (Dureau).

## CONCLUSION

Applicants believe that the present reply is responsive to each point raised by the Examiner in the Office Action and Applicants submit that claims 134-177 of the application are in condition for allowance. Favorable consideration and passage to issue of the application at the Examiner's earliest convenience is earnestly solicited. However, should the Examiner find the claims as presented herein to not be allowable for any reason, Applicants' undersigned representative earnestly requests a telephone conference at (206) 332-1392 with both the Examiner and the Examiner's Supervisor to discuss the basis for the Examiner's continued rejection in light of the Applicant's arguments presented herein and particularly with respect to the patentability of the claims in light of the claim elements: "transmitting classification information in a header of at least some of the plurality of video programs transmitted; providing a mechanism to compare the classification information to preference information of a consumer location; and providing a mechanism to automatically select video programs from the plurality of video programs having a defined degree of similarity between the classification information and the preference information."

Likewise, should the Examiner have any questions, comments, or suggestions that would expedite the prosecution of the present case to allowance, Applicants' undersigned representative would very much appreciate a telephone conference to discuss these issues.

Date: June 9, 2005



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